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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 DAVID LEVOYD REED,
8 Plaintiff,

9 v.

10 JAMES DZURENDA, et al.,
11 Defendants.

Case No. 2:19-cv-00172-APG-NJK

ORDER

[Docket No. 50]

12 Pending before the Court is Plaintiff David Levoyd Reed's motion for leave to file a second
13 amended complaint. Docket No. 50. The motion is properly resolved without a hearing. *See*
14 Local Rule 78-1. For the reasons discussed more fully below, the Court **GRANTS** in part and
15 **DENIES** in part the motion.

16 **I. BACKGROUND**

17 On November 18, 2019, United States District Judge Andrew P. Gordon screened
18 Plaintiff's first amended complaint pursuant to 28 U.S.C. § 1915. Docket No. 8. In screening
19 Plaintiff's first amended complaint, Judge Gordon found that Plaintiff stated colorable excessive
20 force claims against Defendants Nelson and Officer John Doe and a colorable First Amendment
21 retaliation claim against Defendant Nelson. *Id.* at 11. Judge Gordon further found that Plaintiff
22 failed to state a colorable First Amendment retaliation claim against Defendant Inspector General.
23 *Id.* at 8. In so doing, Judge Gordon explained:

24 Although the amended complaint is not clear, it appears that Reed
25 argues that Doe Inspector General is responsible for Nelson's
26 retaliation because Doe Inspector General did not investigate and
27 remove Nelson from his post. . . . Reed does not allege that Doe
28 Inspector General participated in Nelson['s] alleged retaliation or
that Doe Inspector General was aware that Nelson would retaliate
against Reed and failed to stop him. I dismiss Doe Inspector General
from this claim without prejudice.

1 *Id.* Judge Gordon also dismissed Plaintiff’s claims under 42 U.S.C. § 1985 without prejudice
2 because he made no allegations about a conspiracy. *Id.* at 9. In addition, Judge Gordon found that
3 “the Nevada Tort Claim[s] Act does not provide an independent cause of action” and, therefore,
4 dismissed Plaintiff’s claims under the Nevada Tort Claims Act with prejudice. *Id.* at 11.

5 On April 21, 2021, Plaintiff filed the instant motion for leave to file a second amended
6 complaint. Docket No. 50.

7 **II. LEGAL STANDARDS**

8 **A. Motion for leave to amend complaint**

9 Fed. R. Civ. P. 15(a) provides that “[t]he courts should freely give leave [to amend] when
10 justice so requires[.]” Fed. R. Civ. P. 15(a). There is a strong public policy in favor of permitting
11 amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). Under Fed. R. Civ. P. 15(a),
12 courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the
13 opposing party; (4) futility of the amendment; and (5) whether the plaintiff has previously amended
14 the complaint. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).
15 Where, as here, the Court has granted a plaintiff’s request to proceed *in forma pauperis* and the
16 plaintiff seeks leave to amend before a defendant has responded to the complaint, the proposed
17 amended complaint is also subject to screening pursuant to 28 U.S.C. § 1915(e). *See Williams v.*
18 *Las Vegas Metro. Police Dep’t*, 2019 WL 5199300, at *2 n.4 (D. Nev. Sept. 23, 2019); *see also*
19 *Olausen v. Murguia*, 2014 WL 6065622, at *5 (D. Nev. Nov. 12, 2014) (“To clarify, courts in this
20 district screen complaints and amended complaints at the pre-answer stage”).

21 Section 1915(e) permits courts to dismiss a case if the action is legally “frivolous or
22 malicious,” the complaint fails to state a claim upon which relief may be granted, or the plaintiff
23 seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
24 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
25 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
26 complaint that the deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d
27 1103, 1106 (9th Cir. 1995).

1 Fed. R. Civ. P. 12(b)(6) provides for dismissal of a complaint for failure to state a claim
2 upon which relief can be granted. Review under Fed. R. Civ. P. 12(b)(6) is essentially a ruling on
3 a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly
4 pled complaint must provide a short and plain statement of the claim showing that the pleader is
5 entitled to relief. Fed. R. Civ. P. 8(a)(2); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007). Although Fed. R. Civ. P. 8 does not require detailed factual allegations, it demands “more
7 than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
9 Courts must accept as true all well-pled factual allegations contained in the complaint, but the
10 same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of
11 the elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at
12 678. Additionally, where the claims in the complaint have not crossed the line from conceivable
13 to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.

14 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
15 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2010) (finding that liberal
16 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*). “However, a liberal
17 interpretation of a civil rights complaint may not supply essential elements of the claim that were
18 not initially pled.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 **B. Motion for reconsideration**

20 Motions for reconsideration are disfavored. Local Rule 59-1(b); *see also Koninklijke*
21 *Philips Elecs. N.V. v. KXD Tech., Inc.*, 245 F.R.D. 470, 472 (D. Nev. 2007) (quoting *Kona*
22 *Enterps., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)) (“Reconsideration is ‘an
23 extraordinary remedy, to be used sparingly’”). The Local Rules provide the applicable standards
24 in addressing whether the Court should reconsider an interlocutory order, indicating that
25 reconsideration may be appropriate if (1) there is newly discovered evidence that was not available
26 when the original motion or response was filed, (2) the Court committed clear error or the initial
27 decision was manifestly unjust, or (3) there is an intervening change in controlling law. Local
28 Rule 59-1(a); *see also Dixon v. Wallowa Cty.*, 336 F.3d 1013, 1022 (9th Cir. 2003). It is well-

1 settled that a motion for reconsideration “may *not* be used to raise arguments or present evidence
2 for the first time when they could reasonably have been raised earlier in the litigation.” *Kona*
3 *Enterps., Inc*, 229 F.3d at 890 (emphasis in original).

4 **III. ANALYSIS**

5 **A. Motion for leave to amend complaint**

6 Plaintiff seeks to amend his complaint by correcting Defendant Nelson’s name to
7 Defendant Ted Nielson and dismissing Defendant John Doe. Docket No. 50 at 1; *see also* Docket
8 No. 50-1 at 1, 2, 4, 5, 6, 9. On January 9, 2020, the Office of the Attorney General for the State
9 of Nevada (“Attorney General’s Office”) filed a notice advising the Court that it had identified one
10 of the defendants as Defendant Ted Nielson. Docket No. 16. On April 19, 2021, the Attorney
11 General’s Office filed a notice accepting service on behalf of Defendant Ted Nielson. Docket No.
12 47. The Attorney General’s Office, however, did not accept service on behalf of Defendant John
13 Doe because it could not identify Defendant John Doe. *Id.* In light of the parties’ agreement that
14 Defendant Ted Nielson is the proper defendant, the Court grants Plaintiff’s request to amend his
15 complaint by correcting Defendant Nelson’s name to Defendant Ted Nielson. *See Middleton v.*
16 *Human Behavior Inst., Ltd.*, 2017 WL 579896, at *1 n.2 (D. Nev. Feb. 13, 2017) (granting
17 plaintiff’s unopposed motion for leave to file an amended complaint to correctly name a
18 defendant). Given that the Office of the Attorney General has not accepted service on behalf of
19 Defendant John Doe and that Defendant John Doe has not appeared in this case, the Court denies
20 Plaintiff’s request to amend his complaint by dismissing Defendant John Doe as moot.

21 **B. Motion for reconsideration**

22 Plaintiff also seeks to amend his complaint by adding a First Amendment retaliation claim
23 against Defendant Inspector General. Docket No. 50 at 1; *see also* Docket No. 50-1 at 1, 2, 5, 9.
24 In addition, Plaintiff appears to re-plead claims under 42 U.S.C. § 1985 and the Nevada Tort
25 Claims Act.¹ Docket No. 50-1 at 1, 3, 4, 5. Judge Gordon previously found that Plaintiff failed to
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27 ¹ Plaintiff’s proposed amended complaint also makes a passing reference, without
28 elaboration, to a negligence claim. Docket No. 50 at 6. Given the undeveloped nature of Plaintiff’s
purported negligence claim, the Court does not address that claim herein.

1 state a colorable First Amendment retaliation claim against Defendant Inspector General. Docket
2 No. 8 at 8. Specifically, Judge Gordon found that Plaintiff failed to allege that Defendant Inspector
3 General participated in Defendant Ted Nielson's retaliation or knowingly failed to stop Defendant
4 Ted Nielson from retaliating against Plaintiff. *Id.* Judge Gordon also dismissed Plaintiff's claims
5 under 42 U.S.C. § 1985 because Plaintiff failed to make any allegations about a conspiracy. *Id.* at
6 9. Additionally, Judge Gordon previously dismissed Plaintiff's claims under the Nevada Tort
7 Claims Act with prejudice because "the Nevada Tort Claim[s] Act does not provide an independent
8 cause of action[.]" *Id.* at 11. The Court, therefore, construes Plaintiff's request to amend his
9 complaint by adding a First Amendment retaliation claim and claims under 42 U.S.C. § 1985 and
10 the Nevada Tort Claims Act as a motion for reconsideration.

11 Plaintiff fails to address, let alone demonstrate, that his request to amend his complaint by
12 adding a First Amendment retaliation claim and claims under 42 U.S.C. § 1985 and the Nevada
13 Tort Claims Act meets the standard for granting a motion for reconsideration. Plaintiff fails to
14 submit that newly discovered evidence exists that was not available when he filed his original
15 complaint. Further, Plaintiff fails to submit that the Court committed clear error or that the initial
16 screening order was manifestly unjust. Plaintiff also fails to submit that an intervening change in
17 controlling law has occurred. The Court, therefore, denies without prejudice Plaintiff's request to
18 amend his complaint by adding a First Amendment retaliation claim and claims under 42 U.S.C.
19 § 1985 and the Nevada Tort Claims Act.

20 **IV. CONCLUSION**

21 Accordingly, Plaintiff's motion for leave to amend his complaint, Docket No. 50, is hereby
22 **GRANTED** as to his request to correct Defendant Nelson's name to Defendant Ted Nielson and
23 **DENIED** without prejudice as to all other requests. The Clerk's Office is **INSTRUCTED** to
24 change Defendant Nelson's name to Defendant Ted Nielson.

25 Dated: May 11, 2021

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28 Nancy J. Koppe
United States Magistrate Judge